

R E M A R K S

Examination on the merits is respectfully requested in view of the aforementioned amendments and the following remarks.

1. Status of the Claims

Claims 1-38 are pending. All the pending claims are subject to a restriction requirement. By entry of the present amendment, claims 1-17, 20-22, 30, and 32-38 are canceled without disclaimer.

Claims are canceled herein in part to reduce the number of claims, pursuant to 37 C.F.R. § 1.75(b) (2007). Applicants reserve the right to pursue any canceled subject matter in a continuing application. Applicants further reserve the right to pursue any canceled subject matter in the present application, if pending claims are canceled during prosecution, or if the PTO's reviewing courts set aside Rule 75(b) for any reason during the pendency of this application.

2. Support for the Amendments

The amendment to claim 18 inserts an antecedent basis for "a fragment thereof" in the dependent claims. Claim 19 is amended to incorporate the subject matter of claim 21. The Office indicated that claim 21 is grouped in the same invention as claim 19. Claims 23 and 25 are amended to remove parentheses. Claims 24, 25, 29, and 31 are amended to replace "a" with "the" in the beginning of the claim, to clarify that the claims are dependent. Various claims also are amended to remove a reference to claim 8. Finally, claim 27 is reworded to state more clearly the subject matter of the claim. No impermissible new matter is thereby added.

3. Restriction Requirement and Election with Traverse

In the Restriction Requirement, the Office requires restriction of the invention to one of the following groups:

Group I (claims 1-3), directed to an isolated nucleic acid sequence.

- Group II** (claims 32-36), directed to a polynucleotide that is anti-sense to the nucleic acid sequence of Group I and a method of using the same.
- Group III** (claims 4-7, 37, and 38), directed to an isolated protein encoded by the nucleic acid sequence of Group I.
- Group IV** (claims 8-11 and 19-31 “in part”), directed to an antibody that binds the protein of Group III, a method of using the same, a diagnostic kit and biological targeting device comprising the same.
- Group V** (claim 12), directed to a method of making a protein of Group III.
- Group VI** (claim 13), directed to a method of making the antibody of Group IV.
- Group VII** (claims 14 and 16 “in part”), directed to a method of using a protein of Group III.
- Group VIII** (claims 15 and 16 “in part”), directed to a method of using a protein of Group III.
- Group IX** (claim 17), directed to a hybridoma that makes an antibody according to Group IV.
- Group X** (claim 18 and 19-31 “in part”), directed to an antibody that binds the protein of Group III, a method of using the same, a diagnostic kit and biological targeting device comprising the same.

Applicants elect **Group X** (*i.e.*, claims claim 18 and 19-31 “in part”) without traverse.

Species elections

The Office requires an election of a species of alternative splice forms encoded by the nucleic acids of SEQ ID NOS: 1, 2, or 3. The species election does not apply to the presently elected Group X, because the claims are not directed to the nucleic acids of SEQ ID NOS: 1, 2, and 3, or to the encoded alternative splice forms. If the Office nevertheless maintains the species election, Applicants elect SEQ ID NO: 1 with traverse. Traverse is on the grounds that the species election is wholly improper and contrary to the governing PCT rules, set forth in World Intellectual Property Organization, Patent Cooperation Treaty, PCT International Search and Preliminary Examination Guidelines (March 25, 2004) (“Guidelines”) ¶ 10.17 (“Markush

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claims") available at <http://www.wipo.int/pct/en/texts/pdf/ispe.pdf>. Further, the search required to examine all the alternative splice forms is not undue.

The Office further requires election of a species recited in claim 36. Office Action, page 9, item 5. Claim 36 is canceled herein, so the requirement is moot. Solely to provide a complete response, Applicants hereby elect the species of malignant astrocytomas with traverse. Traverse is on the grounds that the election is contrary to PCT rules, *supra*, and that the search required to examine all the species is not undue.

CONCLUSION

Should the Examiner have any questions or comments regarding Applicants' amendments or response, he is asked to contact Applicants' undersigned representative at the telephone number shown below. Please direct all correspondence to the below-listed address.

In the event that the Office believes that there are fees outstanding in the above-referenced matter and for purposes of maintaining pendency of the application, the Office is authorized to charge the outstanding fees to Deposit Account No. 50-0573. The Office is likewise authorized to credit any overpayment to the same Deposit Account Number.

Respectfully submitted,

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BY 

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